IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.1477 of 2007

Dr. (Mrs.) Prabha M. Ketkar — Petitioner
Vs.
Dr. (Ms.) Praba D. Atre — Respondent

Mr.V.G.Mujumdar for petitioner.
Mr.R.G.Ketkar with Mr.R.M.Pethe for respondent.

CORAM: B.H.MARLAPALLE, J.

June 21, 2007.

P.C.

1. Heard Mr.Mujumdar, the learned counsel for the petitioner - original defendant and Mr. Ketkar, the learned counsel for the respondent - original plaintiff landlady. This petition filed under Article 227 of the Constitution arises from an interlocutory order passed by the learned Additional Judge of the Small Causes Court at Pune on 13/11/2006 thereby allowing the amendment application filed in Civil Suit No.468 of 2005.

2. Civil Suit No.468 of 2005 has been filed by the landlady seeking possession of the tenanted premises from the defendant. The defendant is a well-known Gynaecologist and the suit premises are being used as a maternity home and the doctor has her own residential premises just opposite the suit

premises. The description of the suit premises as set out in para 1 of the plaint reads as under :

> "All that block lying on eastern side, admeasuring about 825 sq.ft. built up or thereabout, comprising of erstwhile Block No.2 and a portion of Block No.1 consisting of two drawing rooms, a bed room, a kitchen, a verandah and a toilet block on the ground floor of the building known as "Swara-Prabha", constructed on the property bearing Final Plot No.887, corresponding to City Survey No. 1206B/16 admeasuring 475.18 sq.mt., situated at village Bhamburda (Shivaji Nagar) of Pune City...."

3. The defendant filed her Written Statement on 10/2/2006 and pointed out that the description of the suit premises as set out in para 1 of the plaint were not the premises under her possession and correct description of the suit premises was stated in the rent note dated 28/9/1970 executed by the original owner, Mr.Dattatray Pilaji Atre. The plaintiff filed her affidavit by way of examination-in-chief but did not take steps to correct the description of the suit

premises. She was cross-examined on 4/10/2006 and moved the amendment application at Exhibit 134 for the first time on 7/10/2006. The said application was opposed by the defendant by filing her say on 18/10/2006.

4. There is no dispute that the eviction decree has been sought under Section 16(1)(a) and (g) of the Maharashtra Rent Control Act, 1999. The landlady also in her cross-examination conducted on 4/10/2006 stated that the description of the suit premises as stated in the plaint was correct and even then the learned Judge of the trial Court thought it appropriate and accordingly allowed the amendment application having regards to the nature of the amendment sought to be carried out in the plaint.

5. It is clear that the amendment sought was very minor and mainly to correct the typographical errors. The plaintiff sought to correct the description of the suit premises as under :

> ""All that block lying on eastern side, admeasuring about 825 sq.ft. built up or thereabout, comprising of erstwhile Block No.1

and a portion of Block No.2 consisting of two drawing rooms, a bed room, a kitchen, two verandahs and a toilet block on the ground floor of the building known as "Swara-Prabha"...,

. In short the amendment was only to correct the earlier description of erstwhile block no.2 as block no.1 and a portion of block no.1 as portion of block no.2. In addition in the earlier description, there was one verandah mentioned and this was sought to be amended as two verandahs. The defendant was aware of the exact description of the suit premises including the area and the details of the rooms and verandahs as well, more so when she has been occupying the premises for the last about 40 years or so and, therefore, the learned Judge of the trial Court was right in holding that the amendments if carried out would not cause any prejudice to the defendant-tenant. Though the amendment application was submitted when the trial of the suit had commenced, the proviso below Order VI, Rule 17 of CPC supports the case of the plaintiff in asmuchas the amendment application was not to change the pleadings or to bring on record some new facts. It was related

only to correct the typographical errors that had occurred while typing the plaint. Undoubtedly, when the plaintiff submitted her affidavit by way of examination-in-chief, she had the liberty to correct the description of the suit premises or even when she was under cross-examination. It must be noted that the plaintiff is a well-known Classical singer and it is possible that she was not properly advised when she signed her affidavit by way of examination-in-chief or was not properly briefed when she was in the witness box. The nature of the amendment was only to correct the typographical mistakes and as rightly held by the trial Court, the amendment so permitted would not cause any prejudice to the defendant's case.

6. Hence there is no reason to hold that the impugned order is either perverse or suffers from gross errors. Hence the petition is rejected summarily.

(B.H.MARL